



**Federal Communications Commission  
Washington, D.C. 20554**

November 8, 2013

**DA 13-2143**

*In Reply Refer to:*

1800B3-SS

Released: November 8, 2013

Calvary Chapel of Bremerton  
c/o Harry C. Martin, Esq.  
Fletcher, Heald & Hildreth, PLC  
1300 N. 17<sup>th</sup> St., 11<sup>th</sup> Floor  
Arlington, Virginia 22209

Ms. Michele Molnaire  
Bainbridge Island Broadcasting  
P.O. Box 10449  
Bainbridge Island, Washington 98110

In re: **(NEW), Low Power FM, Bremerton, WA**  
Calvary Chapel of Bremerton  
Facility ID No. 134864  
File No. BNPL-20010614ADW

**(NEW), Low Power FM, Bainbridge  
Island, WA**  
Bainbridge Island Broadcasting  
Facility ID No. 133912  
File No. BNPL-20010601AFS

**Petition to Deny**

Dear Counsel and Ms. Molnaire:

This letter concerns: (1) the referenced, mutually exclusive applications of Calvary Chapel of Bremerton ("CCB") and Bainbridge Island Broadcasting ("BIB"), for construction permit for a new Low Power FM ("LPM") station at Bremerton and Bainbridge Island, Washington, respectively; and (2) BIB's April 26, 2005, Petition to Deny ("Petition") CCB's application.<sup>1</sup> For the following reasons, we dismiss the CCB and BIB applications, and we dismiss the Petition as moot.

**Background.** In June 2001, CCB and BIB filed applications for a construction permit for a new LPM station on Channel 283 (104.5 MHz) at Bremerton and Bainbridge Island. Subsequently, in

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<sup>1</sup> On May 2, 2008, CCB filed a Motion for Extension of Time to respond to the Petition and filed an Opposition to the Petition on May 9, 2008.

accordance with established procedures,<sup>2</sup> the staff released Public Notices accepting the BIB application<sup>3</sup> and CCB application<sup>4</sup> for filing. BIB timely filed its Petition on April 26, 2005.

On April 3, 2009, as the culmination of a channel reallocation process initiated in 2002,<sup>5</sup> the staff granted a covering license application for the reallocation of co-channel full-service commercial Station KMCQ(FM) from The Dalles, Oregon, to Covington, Washington.<sup>6</sup> CCB's and BIB's applications are 56 and 58 kilometers, respectively, short-spaced to Station KMCQ(FM)'s currently authorized modified facilities under Section 73.807(a)(1) of the Rules.<sup>7</sup>

**Discussion.** In the Local Community Radio Act of 2010 ("LCRA"),<sup>8</sup> Congress implemented a set of protections designed to avoid interference between LPFM and full-service FM stations.<sup>9</sup> Although it relaxed certain restrictions on LPFM stations in order to facilitate the growth of the LPFM service, the LCRA explicitly prohibited the Commission from reducing co-channel separation between LPFM and full-service FM stations.<sup>10</sup> Specifically, Section 3(b)(1) of the LCRA statutorily bars the Commission from "amend[ing] its rules to reduce the minimum co-channel and first- and second-adjacent channel distance separation requirements" in effect on the date of its enactment.<sup>11</sup> Here, CCB's and BIB's applications are significantly short spaced to KMCQ(FM)'s licensed facilities. Although the Commission has authority to waive regulatory requirements, it does not have authority to waive a requirement imposed by statute.<sup>12</sup> We must therefore dismiss CCB's and BIB's applications. In addition, we will also dismiss

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<sup>2</sup> See 47 C.F.R. § 73.871(d).

<sup>3</sup> See *Broadcast Applications*, Public Notice, Report No. 25562 (rel. Sep. 3, 2003).

<sup>4</sup> See *Broadcast Applications*, Public Notice, Report No. 26037 (rel. Jul. 29, 2005).

<sup>5</sup> See *Arlington, The Dalles and Moro, Oregon, and Covington and Trout Lake, Washington*, Notice of Proposed Rulemaking, 17 FCC Rcd 10678 (MB 2002); see also *Arlington, The Dalles, Moro, Fossil, Astoria, Gladstone, Portland, Tillamook, Coos Bay, Springfield-Eugene, Manzanita and Hermiston, Oregon, and Covington, Trout Lake, Shoreline, Bellingham, Forks, Hoquiam, Aberdeen, Walla Walla, Kent, College Place, Long Beach and Ilwaco, Washington*, Report and Order, 19 FCC Rcd 12803 (MB 2002).

<sup>6</sup> See File No. BLH-20080915AEW; see also *Broadcast Actions*, Public Notice, Report No. 46959 (rel. Apr. 8, 2009). KMCQ(FM) subsequently sought to modify its transmission facilities, upgrading from a Class C3 to a Class C2 facility. See BMPH-20090929ALM, granted on October 9, 2009, and BLH-20100125AEW, granted on March 22, 2010.

<sup>7</sup> 47 C.F.R. § 73.807(a)(1). The rule states that the co-channel minimum separation requirement to protect a Class C2 station such as KMCQ(FM) is 91 kilometers.

<sup>8</sup> Local Community Radio Act of 2010, Pub. L. No. 111-371, 124 Stat. 4072 (2011).

<sup>9</sup> See *Creation of a Low Power Radio Service and Amendment of Service and Eligibility Rules for FM Broadcast Translator Stations*, Fifth Order on Reconsideration and Sixth Report and Order, 27 FCC Rcd 15402, 15428 n.153 (2012) ("*Sixth Report and Order*") (LRCA does not permit balancing of "the benefit of increased noncommercial educational service" against "the potential for interference").

<sup>10</sup> See *Creation of a Low Power Radio Service and Amendment of Service and Eligibility Rules for FM Broadcast Translator Stations*, Fifth Report and Order, Fourth Further Notice of Proposed Rulemaking, and Fourth Order on Reconsideration, 27 FCC Rcd 3315, 3320 n.42 (2012) ("*Fifth Report and Order*") ("While the LCRA amended Section 632 [of the 2001 D.C. Appropriations Act], it did not alter that section's requirement that the Commission 'prescribe protection for co-channels and first- and second-adjacent channels. . . .').

<sup>11</sup> LCRA, § 3(b)(1); see also *Fifth Report and Order*, 27 FCC Rcd at 3344.

<sup>12</sup> See, e.g., *Rural Health Care Support Mechanism*, Order, 22 FCC Rcd 20360, 20415 (2007); *Federal-State Joint Board on Universal Service*, Memorandum Opinion and Order, 15 FCC Rcd 7170 ¶ 13 (1999); see also *Chrysler Corp. v. Brown*, 441 U.S. 281, 302 (1979) ("[T]he exercise of quasi-legislative authority by governmental (continued . . .)

BIB's Petition as moot. We encourage CCB and BIB to evaluate their positions and, if they choose to do so, re-apply in the currently open LPFM filing window which closes on November 14, 2013.<sup>13</sup>

**Conclusion/Actions.** For the reasons set forth above, IT IS ORDERED that the applications of Calvary Chapel of Bremerton (File No. BNPL-20010614ADW) and Bainbridge Island Broadcasting (File No. BNPL-20010601AFS) for Bremerton and Bainbridge Island, Washington, respectively, ARE DISMISSED.

IT IS FURTHER ORDERED that the Petition to Deny filed by Bainbridge Island Broadcasting on August 26, 2005, IS DISMISSED as moot.

Sincerely,

Peter H. Doyle  
Chief, Audio Division  
Media Bureau

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departments and agencies must be rooted in a grant of such power by the Congress and subject to the limitations which that body imposes.”).

<sup>13</sup> See *Media Bureau Announces Availability of the Revised FCC Form 318 and the Filing Procedures for October 15 -- October 29, 2013 Low Power FM Filing Window*, Public Notice, 28 FCC Rcd 8854 (MB 2013); see also *Media Bureau Extends Low Power FM Filing Window; Second LPFM Webinar Scheduled for October 24, 2013*, Public Notice, DA 13-2029 (MB rel. Oct. 18, 2013).